

The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social

Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding . . .

42 U.S.C. § 405(g).

In her response, filed on August 15, 2005, Defendant, through the United States Attorney's Office for the Western District of North Carolina filed a Motion to Dismiss or, in the Alternative, Objection to Plaintiff's Motion for Remand Pursuant to Sentence Six of 42 U.S.C. § 405(g) and a supporting Memorandum. Defendant requests that Plaintiff's case be dismissed as he has failed to file a complaint that states a claim for relief or includes a statement of grounds for jurisdiction. In the alternative, the Commissioner has requested that Plaintiff's motion for remand pursuant to sentence six of 42 U.S.C. § 405(g) be denied.

In review of the Motions filed in this matter, the Court finds that Plaintiff did not file the correct document in accordance with Rule 8 of the Federal Rules of Civil Procedure. The document that Plaintiff did submit to the Court does not set forth the decision he wishes to appeal, whether there was a final decision by the Commissioner, the date on which the decision was mailed by the Commissioner, any claim of error in the Administrative Law Judge's decision, or the grounds upon which the Court's jurisdiction depends. Moreover, the document fails to allege a claim upon which relief may be granted.

Even if this Court were to consider the merits of Plaintiff's Motion at this time, the evidence does not meet the requirements of sentence six of 42 U.S.C. § 405(g). Plaintiff's request for a remand is based on additional evidence, consisting of a letter dated February 8, 2005 wherein Dr. David Kelly states that Plaintiff has a probable stress fracture of the femoral neck which is part of the hip, and apparently, based upon Plaintiff's information and belief, a

current evaluation of the plaintiff's back problems by Dr. Mark Williamson. As the additional evidence submitted by Plaintiff does not concern the time period on or before the Administrative Law Judge's decision, the evidence fails to meet the materiality requirement of 42 U.S.C. § 405(g). Further, Plaintiff has not provided "good cause" for his failure to submit this evidence during the administrative proceedings as required pursuant to 42 U.S.C. § 405(g).

IT IS THEREFORE ORDERED that Plaintiff William R. Walker's Motion to Submit New and Material Evidence and Request Oral Argument, (file doc. 2), is hereby **DENIED**.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss or, in the Alternative, Objection to Plaintiff's Motion for Remand Pursuant to Sentence Six of 42 U.S.C. § 405(g), (file doc. 5), is hereby **GRANTED**. The action is **DISMISSED**.

Signed: April 11, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees", written in a cursive style.

Richard L. Voorhees
Chief United States District Judge

